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STATE FOR L - LEGAL ADVISER BELLINGER

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SUBJECT: SCENESETTER: LEGAL ADVISER BELLINGER'S VISIT TO
GERMANY TO DISCUSS LEGAL ASPECTS OF THE WAR ON TERROR

REF: A. HAMBURG 63

- [1](#)B. BERLIN 1995
- [1](#)C. BERLIN 2785
- [1](#)D. BERLIN 2654
- [1](#)E. BERLIN 2577
- [1](#)F. BERLIN 2303
- [1](#)G. BERLIN 2058

[1](#)1. (SBU) Summary. Mission Germany warmly welcomes you and your delegation for talks which will deepen our cooperation with Germany in the Global War on Terror. The German Government is serious about combating terrorism and, especially in the wake of the failed train bombing attempts in July, is looking to beef up counterterrorism measures internally, in concert with us, and among EU members. German cooperation has been good, including in law enforcement and other channels. Interior Minister Schaeuble emphasized Germany's desire to do more -- including with respect to terrorist lookout data-sharing -- during his recent visit to Washington. That said, many in the German public believe that the USG has to a certain extent lost its moral bearings.

The list of issues Germans around the country cite: Guantanamo/military commissions; Abu Ghraib; allegations of renditions, secret detention centers, and domestic eavesdropping; and SWIFT. Factors unique to Germany sometimes further complicate issues here -- the use of U.S. air bases in Germany and Germany's own twentieth century history, for example. Despite these challenges, the current and the previous German government have been strong partners in counterterrorism and each side is exploring ways to expand our cooperation. Above all, German officials will appreciate our willingness to engage in a meaningful dialogue with them on international law aspects of the War on Terror. The MFA organized the "Legal Issues in the Fight Against Terrorism" Conference to discuss our governments' interpretations of our legal obligations and what more we can do to reach common ground. Your participation and that of your delegation will go a long way to reassure the Germans that, while firm in our resolve to fight terrorism worldwide, we do not intend to do so at the expense of abandoning the fundamental legal tenets and values that have guided us and our allies. End Summary.

German Legal Changes to Fight Terrorism

[1](#)2. (SBU) In the immediate aftermath of 9/11 and the realization that planning took place in Hamburg, the German government enacted a series of legal changes. These new laws

banned membership in foreign terrorist organizations, strengthened the federal Interior Ministry's ability to ban extremist associations, and simplified security service access to financial and travel records. With the threat of terrorism made even clearer by, for example, the 2004 Madrid train bombings, Germany under the previous Chancellor, Gerhard Schroeder, and then-Minister of the Interior Schily continued to pursue improvements in Germany's counterterrorism legal regime to address perceived shortcomings. Schily created the German version of NCTC -- the Joint Counterterrorism Analysis Center ("GTAZ") in December 2004. In 2005 a new immigration law accelerated deportations of those posing a security risk and also enabled deportations of "hate preachers."

13. (SBU) Chancellor Merkel came into office in November 2005, intent on expanding still further the legal tools for fighting terrorism. Interior Minister Wolfgang Schaeuble subsequently pushed legislation to strengthen the counterterrorism capabilities of the Federal Office of Criminal Investigation (BKA); simplifying and broadening security service access to financial, phone, auto registration and travel data; and extending provisions in previous law that were subject to January 2007 sunset clauses (ref B). In recent weeks and in the aftermath of the failed plot to bomb two German regional trains, Minister Schaeuble and the interior ministers of Germany's 16 federal states finally overcame political and legal obstacles and agreed to a draft law to create a combined counterterrorism database that incorporates data from Germany's dozens of federal and state law enforcement and intelligence/security agencies. The states also have various governing political coalitions, adding to the complexity of reaching agreement. Each state has separate police and security agencies and the

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constitution grants states primacy in law enforcement. Until now, these agencies, all of which are represented at GTAZ, shared their data in several interagency GTAZ working groups.

Bilateral Cooperation Strong, Getting Stronger...

14. (SBU) Bilateral counterterrorism cooperation with Germany has been strong despite unhelpful media attention -- and the chill cast by the work that many contacts face in researching their files to provide relevant data to the Bundestag investigative committee (see para 6). The Embassy has been engaged in an effort to broaden information sharing (ref C-G) to prevent terrorism -- building on an unprecedented level of information sharing during the summer 2006 Soccer World Cup. We continue to use every opportunity to point out that only by connecting the dots among our own agencies and also among other countries will we continue to be able to stop terrorism. Senior German officials, including Interior Minister Schaeuble, share our desire to build up our existing cooperation.

...But Public and Media Opinion Still Wary of
U.S. motives and Methods

15. (SBU) While the German Government and, to a lesser extent, the German public are cognizant of the threat posed by international terrorism and the need for an effective response, many Germans argue that the United States has to a certain degree lost its moral bearings. This view spans the political spectrum to include many who are otherwise well-disposed to the U.S. Many Germans believe the USG acts in ways Germany and the EU cannot and will not for reasons of due process, civil liberty protection, and data privacy rules. Opinion surveys, media reports, and individual conversations/meetings Mission officers have had around the country contribute to this picture. A recent in-house speech

by a senior German government attorney categorized the U.S., along with Russia and China, as one of the main violators of international law.

¶6. (SBU) A Bundestag special investigative committee is currently considering a number of allegations, including German knowledge of and complicity in alleged renditions and bomb targeting in the Iraq war. The committee may continue to meet throughout the entire term of the current government (i.e., three more years). While senior German Justice and Interior officials call the committee a political tool of the opposition Greens, Free Democrats, and the Left Party, the committee's work has a resonance with the German public.

¶7. (SBU) Moreover, a number of U.S. actions in the war on terror have a German connection. The recent release of Murat Kurnaz from detention in Guantanamo resulted in press coverage of his allegations of mistreatment by U.S. and German interrogators (ref A) and the allegation that the previous German government failed to follow up on an alleged U.S. offer to release him years ago. Members of the Bundestag investigative committee say they will look into the matter. The German government's position is that the Guantanamo facility should be closed and the individuals interned there tried, although German officials will concede the difficulties the U.S. faces in handling those interned there who had been seized, for example, in Afghanistan.

¶8. (SBU) The alleged rendition of Khaled Al Masri is another case in the media spotlight and of interest to the Bundestag investigative committee. Working level Justice Ministry officials state that Spanish authorities gave Germany the names of U.S. officials allegedly involved and they claim German prosecutors may have no choice but to seek international arrest warrants because the case involves the alleged kidnapping of a German citizen. The German press has quoted German officials from the opposition saying that the German prosecutor's investigation would have proceeded faster if it did not involve the U.S., which they say should "come clean" on Al Masri. The Al Masri case has been the most prominent alleged rendition in German media, but the alleged rendition of Abu Omar also gets press play. Regarding Abu Omar, German media and politicians have focused on the

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alleged transit of an aircraft in Germany en route between Italy and Egypt. Politicians cite this case as justification for seeking more information concerning passengers and cargo of U.S. aircraft transiting U.S. military airfields in Germany.

¶9. (SBU) While the German and U.S. governments have put aside their differences over the 2003 decision to use military force in Iraq, the perception lingers in Germany that the war was "illegal." Many U.S. troops left for Iraq from their bases in Germany. Later, German coverage of the Abu Ghraib scandal highlighted those U.S. military personnel said to have been based in Germany and prompted petitions to the German Federal Prosecutor to seek indictments of U.S. military personnel and other officials under Germany's domestic law implementing the Rome Convention on the International Criminal Court. The prosecutor ultimately used his discretion not to pursue charges.

¶10. (SBU) Germany's press has often exacerbated negative public opinions. Recent examples:

-- Center-left Stern on Oct. 5: "The 'terror camp' of Guantanamo has seriously damaged the noble U.S. export (of democracy) because if you repeatedly act like your enemies, if you mistreat people, kidnap them, violate basic human rights, you obliterate the differences of which the U.S. is proud. Many U.S. detention camps in Afghanistan, Iraq and Guantanamo are legal no man's lands."

-- Center-left Sueddeutsche Zeitung on September 30: "The

new terror billl in the U.S. ridicules the democratic achievements of the country...At the beginning of the 21st century, the grinning face of the Middle Ages is peering through the door, above all in America. Torture, or at least 'torture lite,' has become a legitimate method in the war on terror."

-- Business daily Financial Times Deutschland on October 2:
"This week, an act will probably be implemented that marks a change in American history. Congress will now allow the President to kidnap any foreigner who is suspected of participating in anti-American terrorism."

Enhanced Dialogue Will Pay Dividends

¶11. (SBU) As noted above, the German Government remains ready to continue and expand counterterrorism cooperation with us, notwithstanding the concerns among many in the German public about U.S. policies and practices. An essential component of our efforts to reassure our German friends is our willingness to engage in dialogue at all levels and on all aspects of our counterterrorism policies and efforts. Your participation in the conference will help further clarify misconceptions about our intentions and remind our German interlocutors that we continue to be guided by the rule of law. It will augment USG efforts to push back vocally and robustly to counter the negative perceptions of our German and other European critics and at the same time reinforce the support of our friends in the German Government and in the German body politic.
TIMKEN JR